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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

mSIGNIA, Inc.

Plaintiff,

vs.

InAuth, Inc.

Defendant.

Case No. 8:17-cv-01289-AG-KES

**DEFENDANT INAUTH, INC.'S  
MEMORANDUM IN SUPPORT  
OF ITS MOTION FOR  
SUMMARY JUDGMENT  
OF NON-INFRINGEMENT**

Date: December 17, 2018  
Time: 10:00 a.m.  
Hon. Andrew J. Guilford  
Courtroom 10D

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1 Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56, Defendant  
2 InAuth, Inc. (“InAuth”) respectfully submits this memorandum in support of its  
3 motion for summary judgment of non-infringement.

4 **I. INTRODUCTION**

5 mSIGNIA abandoned all but one of its infringement claims after the parties  
6 appeared before the Court at the June 2018 Claim Construction Hearing. At that  
7 time, mSIGNIA asserted that every commercial product made and sold by InAuth  
8 (seven products, accounting for all of InAuth’s revenue), as well as one prototype  
9 product (the “V3 prototype”) infringed the one patent-in-suit, U.S. Patent No.  
10 9,559,852 (the “’852 patent”). Statement of Uncontroverted Facts and Conclusions  
11 of Law (“SUF”) ¶ 8. The accused commercial products were InMobile, InBrowser  
12 (V2), InRisk, InReach, InAuthenticate, InExchange, and InPermID (“InAuth  
13 Commercial Products”). *Id.* ¶ 8. But, as InAuth explained to mSIGNIA throughout  
14 this litigation, InAuth’s products could not infringe because they did not store for an  
15 identity or associate with an identity any “information regarding anticipated  
16 changes” to device data values, as required by the claims. As the Court held in the  
17 June 6, 2018 Claim Construction Order, under the plain meaning of “information  
18 regarding anticipated changes,” this term is “directed to something different than  
19 using backwards-looking information about changes after they occur to make an  
20 evaluation.” Dkt. 43 at 9. InAuth’s products are purely backwards-looking and  
21 evaluate changes only after they occur, and thus cannot infringe.

22 Conceding as much, at least with respect to the InAuth Commercial Products,  
23 mSIGNIA withdrew *all* of its infringement claims against these products on  
24 September 26, 2018, the day before its infringement expert report was due. SUF ¶  
25 10. mSIGNIA notified InAuth it only intended to proceed to trial on its  
26 infringement claim against the V3 prototype. SUF ¶ 10.

27 InAuth respectfully submits that the V3 prototype, like the InAuth  
28 Commercial Products that mSIGNIA originally accused and then withdrew its

1 allegations against, does not infringe any asserted claim of the '852 patent.  
2 Accordingly, InAuth respectfully requests entry of summary judgment of non-  
3 infringement.

4       The V3 prototype was an experimental software functionality InAuth briefly  
5 beta tested with three customers during May and June 2017. The V3 prototype was  
6 designed to assign identifiers to web browsers. It would evaluate various attributes  
7 of a web browser and determine whether the browser is one the system had seen  
8 before (and thus should be given its previously assigned identifier) or one that it had  
9 not seen before (and thus should be given a new identifier). The V3 prototype failed  
10 its beta test, producing unacceptable delays and performance worse than InAuth's  
11 admittedly non-infringing InBrowser V2 product that it sells today. The V3  
12 prototype suffered from large delays because it would perform a backwards-looking  
13 analysis that compared the presented browser information to a large amount of  
14 historical information, and that comparison unavoidably made the system slow. The  
15 V3 prototype was scrapped after its beta test and, as is undisputed, was never sold to  
16 a single customer.

17       The V3 prototype does not infringe any asserted claim of the '852 patent for  
18 the same reasons the InAuth Commercial Products do not: (1) it did not store  
19 "information regarding anticipated changes" to any data values; (2) it did not store  
20 any such information "for an identity" or "associated with" any identity; and (3) it  
21 did not include functionality for "recognizing that the presentation of identity  
22 information by the computer is authentic" or is not authentic.

23       *First*, the V3 prototype did not store any "information regarding anticipated  
24 changes" because it was a purely backwards-looking system. The V3 prototype  
25 would receive current attribute values for a browser to be identified and compare  
26 them with previously recorded attribute values for a browser the system had seen  
27 before to determine which attribute values, if any, did not match the historical  
28 values. It then consulted a static look-up table (the "V3 target table") that told the

1 system whether the browser was a new or returning browser, given the number and  
2 type of backwards-looking mismatches observed.

3 The only alleged “information regarding anticipated changes” identified by  
4 mSIGNIA in connection with the V3 prototype is the V3 target table. But the V3  
5 target table contains no stored predictions or other information regarding anticipated  
6 changes to a browser’s attribute values. It is simply a type of “grading sheet” that  
7 tells the system what to do (assign a new ID or a previously stored one) based on  
8 which attributes did and did not match their previously stored value after a  
9 backwards-looking comparison. Critically for this motion, the V3 prototype only  
10 evaluated changes *after* they occurred to determine which attributes matched and  
11 which did not match historical values. mSIGNIA’s claims, as the Court has already  
12 found, are directed to something different from a backwards-looking system that  
13 evaluates changes only after they occur. Accordingly, the V3 prototype does not  
14 infringe.

15 *Second*, even if the V3 target table were “information regarding anticipated  
16 changes” (which it is not), mSIGNIA’s infringement claims are still fatally flawed  
17 given that mSIGNIA has not – because it cannot – presented any evidence that the  
18 V3 target table is “stored for an identity” or “associated with” any identity. As  
19 mSIGNIA’s expert has admitted, there was just one, single target table in the V3  
20 prototype – regardless of how many identities there were. And the V3 target table  
21 applied just the same across all those identities. There was no identity-specific  
22 information in the V3 target table, nor was it linked to, associated with, or otherwise  
23 “stored for” an identity in any manner. Accordingly, the V3 prototype cannot  
24 satisfy the claim terms requiring that the information regarding anticipated changes  
25 is “associated with” or “stored for an identity.”

26 *Third*, the V3 prototype did not include functionality for “recognizing that the  
27 presentation of identity information by the computer is authentic.” Indeed, that was  
28 not the purpose of the V3 prototype. Any “presentation of identity information by

1 the computer” was assigned an identifier by the V3 prototype (either a new one or a  
2 previously stored one). It could not reject a browser as inauthentic; it always  
3 assigned an identifier. And, in any event, there is no dispute that the V3 prototype  
4 was never used by any beta test customer to actually authenticate any user.

5 For all these reasons, as discussed in more detail below, InAuth respectfully  
6 requests that the Court grant its motion for summary judgment that the V3 prototype  
7 does not infringe any asserted claim of the ’852 patent.

## 8 **II. BACKGROUND**

### 9 **A. The Asserted Claims**

10 The asserted claims of the ’852 patent are Claims 1-6, 13-15, 20, 22, 23, and  
11 25 (the “Asserted Claims”). Only two independent claims are asserted, Claims 1  
12 and 25. Claim 1 is exemplary and excerpted below, with the claim terms most  
13 pertinent to this motion bolded:

14 1. An identity recognition system comprising:

15 a non-transitory memory *storing information associated with one*  
16 *or more identities*, wherein *the information stored for an identity*  
17 *includes*

18 (a) data values associated with that identity; and

19 (b) *information regarding anticipated changes to one or more*  
20 *of the stored data values associated with that identity;*

21 one or more hardware processors in communication with the  
22 memory and configured to execute instructions to cause the identity  
23 recognition system to recognize that the presentation of identity  
24 information by a computer is authentic, by performing operations  
25 comprising:

26 generating a challenge to the computer, wherein the challenge  
27 prompts the computer to provide a response based on one or  
28 more data values from the computer that correspond to one or  
more of the stored data values associated with the identity;

receiving, from the computer, the response to the challenge;



determining whether the response is allowable, wherein such determining comprises using the stored information regarding anticipated changes to the stored data values associated with the identity to determine whether a data value used to form the response is based on an acceptable change to a corresponding stored data value; and

*recognizing that the presentation of identity information by the computer is authentic*, according to whether the computer has provided an allowable response to the challenge.

The remaining Asserted Claims are set forth in full in the SUF filed herewith. SUF ¶¶ 18-31.

**B. The Court's Claim Construction Order**

1. *"Information Regarding Anticipated Changes to One or More of the Stored Data Values Associated with that Identity"*

The Court addressed six terms of the Asserted Claims in its Claim Construction Order. Dkt. 43. With respect to the claim term "information regarding anticipated changes to one or more of the stored data values associated with that identity," the Court held that required no construction and, accordingly, has its plain and ordinary meaning. *Id.* at 10. The Court also provided guidance on the plain and ordinary meaning of this term, noting that the term is "directed to something different than using backwards-looking information about changes after they occur to make an evaluation." *Id.* at 9.

As the Court noted, InAuth contended during the claim construction proceedings that this aspect of the term was relevant because its accused products "only use information gathered *after* the changes have been recognized, rather than predicting changes before they occur." Dkt. 43 at 9 (emphasis in original). InAuth explained that it was concerned mSIGNIA's infringement allegations would create "mischief" and seek to read the "information regarding anticipated changes" limitation on products that only engage in a backwards-looking analysis. *Id.* at 9.



1 During the Claim Construction hearing, the Court asked mSIGNIA’s counsel  
2 whether mSIGNIA agreed that the plain meaning of the “information regarding  
3 anticipated changes” limitation “excludes solely evaluating changes after they  
4 occur,” and mSIGNIA’s counsel agreed. SUF ¶ 32 (Dkt. 44 (Transcript of Claim  
5 Construction Hearing, June 6, 2018) at 17:21-18:8).

6 As the Court noted, mSIGNIA also distinguished the Etchegoyen prior art  
7 reference on the basis that it “does not rely on information regarding anticipated  
8 (*i.e.*, predicted, foreseen, expected) changes to a specific data value; instead,  
9 Etchegoyen gives rules on what changes are *acceptable* to the group as a whole, but  
10 without actually *anticipating* any changes for any of the stored data values.” Dkt.  
11 43 at 7 (emphasis in original).

12 2. *The Requirement That “Information Regarding Anticipated*  
13 *Changes to One or More of the Stored Data Values Associated*  
*with that Identity” Be “Stored for an Identity”*

14 The term “information regarding anticipated changes to one or more of the  
15 stored data values associated with that identity” appears in the limitation of the  
16 independent claims that specifies what information the claimed system must “store  
17 for an identity.” There is no dispute that, consistent with the Court’s Claim  
18 Construction Order, this limitation is to be given its plain and ordinary meaning.  
19 The full limitation, as it appears in Claim 1, is set forth below:

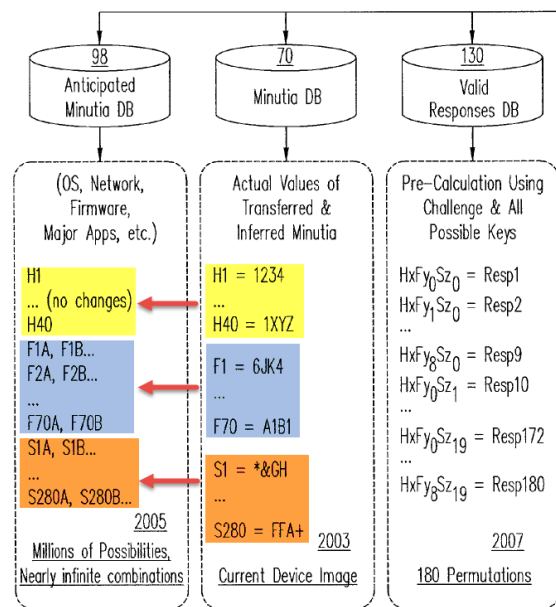
20 a non-transitory memory ***storing information associated with one or***  
21 ***more identities, wherein the information stored for an identity***  
22 includes (a) data values associated with that identity; and (b)  
information regarding anticipated changes to one or more of the stored  
data values associated with that identity;

23 Ex. A, ’852 patent, Claim 1 (emphasis added). (Exhibits cited in this Memorandum  
24 are in reference to the Exhibits to the Declaration of Matthew D. Robson, filed  
25 concurrently herewith, unless stated otherwise).

26 Under the plain meaning of this limitation, it specifies storing certain  
27 information “associated with one or more identities.” The “wherein” clause then  
28 expressly requires that the information “stored for an identity” include two specific

types of information: (a) data values associated with that identity; and (b) information regarding anticipated changes to the data values associated with that identity.

Storage of these two types of information for an identity is shown in Figure 2 of the '852 patent, which depicts the databases used by the alleged invention. The stored information of (a) is shown in the Minutia DB (DB meaning database) 70, and the corresponding stored information of (b) is shown in the Anticipated Minutia DB 98:



Ex. A, '852 patent, Fig. 2 (annotated).

The Minutia DB 70 stores the “Current Device Image” for a particular device, including current hardware data values (e.g., serial number), firmware data values (e.g., operating system version), and/or software data values (e.g., names of applications the user has installed). *Id.* at 11:30-46. The Anticipated Minutia DB 98 stores predicted future values for each of the data values stored for the identity in Minutia DB 70. For example, for each of the 280 software data values stored for a particular computer in Minutia DB 70 (shown as S1-S280), predicted specific future values for these data values are stored in the Anticipated Minutia DB (e.g., S1A, S1B, etc.).

1 To determine whether device data corresponds to that of an authentic  
2 device/user, the system compares current device minutia to corresponding entries  
3 stored in the Anticipated Minutia DB to determine whether the current data values  
4 conform to the stored predicted future values. *Id.* at 13:15-22. If the current device  
5 data values match the anticipated data values for that particular device/user, then the  
6 device/user may be authenticated. But if the current device data values do not  
7 match the anticipated data values for that particular device/user, “then a validation  
8 failure process as described in FIG. 6B can alert the service provider 14 that the  
9 validation has failed.” *Id.* at 18:1-3.

### 10 C. The V3 Prototype

#### 11 1. *The May-June 2017 Beta Test*

12 The V3 Prototype was beta tested in May and June of 2017 with three InAuth  
13 customers. SUF ¶ 33. The V3 prototype produced unacceptable performance  
14 delays and was abandoned in June 2017. SUF ¶¶ 35-42. The V3 prototype suffered  
15 from large delays because it had to compare current data values to large amounts of  
16 historical data, and that comparison unavoidably made the system slow. SUF ¶¶ 39-  
17 41.

#### 18 2. *The Undisputed Material Facts Regarding Technical Operation* 19 *of the V3 Prototype*

20 InAuth made the full source code base for the V3 prototype available for  
21 inspection by mSIGNIA as of January 4, 2018. SUF ¶ 45. There can be no genuine  
22 dispute as to any material fact regarding how the V3 prototype works, given that  
23 both sides have had access to the source code, which describes how all aspects of  
24 the V3 prototype operated.

25 The V3 prototype was designed to assign an identifier, called an  
26 InBrowserID, to a browser. SUF ¶ 46. If the V3 prototype worked, InAuth could  
27 then provide this identifier to an InAuth customer (*e.g.*, a company with an internet  
28 website that permits commercial transactions). The customer, in turn, could use the

1 identifier as part of its broader authentication process to determine whether to allow  
2 the browser to engage in a transaction. SUF ¶ 47. It is undisputed, however, that no  
3 InAuth customer during the beta test, or any other time, actually used the V3  
4 prototype, or any InBrowserID issued by the V3 prototype, to authenticate a user or  
5 transaction. SUF ¶ 48.

6 The V3 prototype used a database to store certain historical information  
7 associated with each InBrowserID. SUF ¶ 50. Specifically, each InBrowserID was  
8 linked to and associated with the observed data values obtained from a particular  
9 browser when it last accessed the system and was assigned the InBrowserID. SUF ¶  
10 51. The V3 target table is not stored in the database containing InBrowserIDs and  
11 their associated data values. SUF ¶ 53. It is not associated with, connected to, or  
12 linked to in any manner any specific InBrowserID. SUF ¶ 54.

13 The V3 prototype would receive from a browser to be evaluated current data  
14 values for various attributes of the browser (*e.g.*, observed fonts and IP address).  
15 SUF ¶ 52. It would then look backwards to determine whether the browser was one  
16 the system had seen before, or was a new browser it had not seen before. SUF ¶¶  
17 55-57. If a browser accessing the system was determined to be a new browser the  
18 system had not seen before, the V3 prototype was designed to return a new  
19 InBrowserID. SUF ¶ 57. If, on the other hand, the data values were determined to  
20 correspond to a browser the system had seen before, the InBrowserID previously  
21 assigned to the browser would be returned. SUF ¶ 56.

22 The V3 prototype made this determination in two general steps:

23 *First*, after the V3 prototype received a collected set of attributes for a  
24 browser (referred to as an “observation”), it would look backwards to compare them  
25 to previously stored past observations for browsers the system had seen before.  
26 SUF ¶¶ 58-60. The V3 prototype would attempt to find a historical observation in  
27 its database that matched all of the pertinent attribute values exactly. SUF ¶ 60. If  
28

1 such a historical observation was found, the V3 prototype returned the stored  
2 InBrowserID of the most recent such historical observation. SUF ¶ 61.

3 In the event certain attribute values of the observation matched a prior  
4 observation, while certain others did not, the V3 prototype would determine which  
5 specific attributes did and did not match the historical values. SUF ¶¶ 62-64. In this  
6 way, it would build what is called a “difference vector,” which is a way of showing  
7 which attributes for the browser being evaluated did and did not match a historical  
8 observation stored in the database. SUF ¶ 64.

9 The V3 prototype generated a difference vector by looking backwards to  
10 compare the values of 21 specific attributes in the observation to the historical value  
11 of each, attribute-by-attribute, to see if each individually matched or did not match  
12 history. SUF ¶¶ 62-64. The V3 prototype recorded a “0” in the difference vector if  
13 an attribute (*e.g.*, IP address) matched exactly or a “1” if it did not match. A  
14 difference vector was thus a list of 0’s and 1’s, representing which attributes did and  
15 did not match history. SUF ¶ 64.

16 *Second*, the V3 prototype would determine whether the observation  
17 corresponded to a new or returning browser based on which attributes matched and  
18 which did not match their historical values. It did so by consulting the V3 target  
19 table. SUF ¶ 65. The V3 target table is a static set of instructions on whether to  
20 conclude that the browser being evaluated is a new or returning browser, based on  
21 which attributes did and did not match (*i.e.*, the difference vector). SUF ¶¶ 65-70.

22 The V3 prototype had only one target table. SUF ¶ 79. The single target  
23 table applied to all identities in the same way and was not individualized for any  
24 particular browser or user. SUF ¶ 80.

25 In response to receipt of identity information (a browser observation), the V3  
26 prototype was designed to *always* return an InBrowser ID for the browser (either a  
27 new ID or a previously stored ID). SUF ¶ 77. The V3 prototype did not include any  
28

1 functionality for determining whether the identity information was authentic or  
2 inauthentic and, therefore, always assigned an InBrowserID. SUF ¶ 78.

3 The V3 prototype was never sold to a customer. SUF ¶ 44. During the beta-  
4 testing of the V3 prototype, the three InAuth customers involved in the beta-testing  
5 continued to use the commercial V2 InBrowser product. SUF ¶ 43.

### 6 **III. THE SUMMARY JUDGMENT STANDARD**

7 The Federal Rules of Civil Procedure authorize entry of summary judgment  
8 where “the pleadings, the discovery and disclosure materials on file, and any  
9 affidavits show that there is no genuine issue as to any material fact and that the  
10 movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). “Material  
11 facts are those necessary to the proof or defense of a claim, as determined by  
12 reference to the substantive law.” *Bird Barrier Am., Inc. v. Bird-B-Gone, Inc.*, 676  
13 F. Supp. 2d 929 (C.D. Cal. Dec. 16, 2009).

14 When a motion for summary judgment is properly supported by documentary  
15 and testimonial evidence, the nonmoving party may not rest upon the allegations or  
16 denials of its pleadings, but must instead present significant probative evidence to  
17 establish a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
18 327 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986) (“[A] party  
19 opposing a properly supported motion for summary judgment may not rest upon  
20 mere allegation or denials of his pleading, but must set forth specific facts showing  
21 that there is a genuine issue for trial.”).

22 A determination of patent infringement involves a two-step process. “First,  
23 the court determines the scope and meaning of the patent claims asserted. . . .  
24 Second, the properly construed claims must be compared to the accused device.”  
25 *Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1115 (Fed.  
26 Cir. 2004). “Because the ultimate burden of proving infringement rests with the  
27 patentee, an accused infringer may establish that summary judgment is proper  
28 ‘either by providing evidence that would preclude a finding of infringement, or by



1 showing that the evidence on file fails to establish a material issue of fact essential  
2 to the patentee's case.” *Cambrian Sci. Corp. v. Cox Commc'ns, Inc.*, No. 11-  
3 01011, 2014 WL 12597150, at \*14 (C.D. Cal. Jun. 13, 2014). Where the operation  
4 of the accused product is not disputed, the infringement analysis “reduces to a  
5 question of claim interpretation and is amenable to summary judgment.” *MyMail,*  
6 *Ltd. v. Am. Online, Inc.*, 476 F.3d 1372, 1836 (Fed. Cir. 2007).

#### 7 **IV. ARGUMENT**

8 Summary judgment should be granted that the V3 prototype does not infringe  
9 any Asserted Claim for three reasons: (1) the V3 prototype did not store any  
10 “information regarding anticipated changes”; (2) the V3 prototype did not store any  
11 such information in association with or “for an identity”; and (3) the V3 prototype  
12 did not include any functionality for performing the step of “recognizing that the  
13 presentation of identity information is authentic . . . .” Each of these reasons  
14 standing alone would warrant summary judgment of non-infringement. *See, e.g.,*  
15 *Bird Barrier Am., Inc.*, 676 F. Supp. 2d at 931 (“If the plaintiff cannot prove that the  
16 defendant's device has every claim limitation, summary judgment should be granted  
17 in the defendant's favor.”). Together, these three reasons provide more than  
18 sufficient basis for summary judgment of non-infringement.

##### 19 **A. The V3 Prototype Does Not Infringe Any Asserted Claim Because** 20 **It Did Not Store Any “Information Regarding Anticipated** 21 **Changes”**

22 The V3 prototype does not, and cannot, infringe any Asserted Claim because  
23 it did not store any “information regarding anticipated changes to one or more of the  
24 stored data values associated with that identity.” The only alleged such information  
25 is the V3 target table. *See* Ex. D, Opening Expert Report of Michael T. Goodrich,  
26 Ph.D. (“Goodrich Opening Report”) ¶ 136 (“In particular, the V3 target table, which  
27 I described in Section VI above and which includes the difference vectors and target  
28 vector, satisfy this limitation.”). But the V3 target table cannot constitute  
“information regarding anticipated changes” under the plain meaning of that term.



1       First, the V3 target table constitutes “backwards-looking information about  
2 changes after they occur to make an evaluation,” which is outside the scope of the  
3 plain meaning of “information regarding anticipated changes,” as clarified by the  
4 Court. As discussed above, each difference vector in the V3 target table is simply  
5 information on which attributes did and did not match historical data values. There  
6 is no dispute on this fact. Indeed, mSIGNIA’s expert Dr. Goodrich admitted this  
7 fact during his deposition, when asked what the “1s” and “0s” for the difference  
8 vectors of the V3 target table represented:

9       Q. Okay. And so if that represents time.tz as an attribute -- and I'm  
10 thinking time zone -- that means that time.tz was not a match as  
compared to the last time zone that was logged; right?

11       A. That's right.

12       Q. Okay. Not a match. It doesn't proffer any prediction as to what  
13 time zone the user is supposed to be in, but it tells you the time zone  
was not a match from the last time; right?

14       A. That's what that 1 indicates, yes.

15       SUF ¶ 70 (Ex. E, Goodrich Dep., Tr. at 214:9-215:4). The V3 prototype made a  
16 backwards-looking comparison between the present and the past, not between the  
17 present and any previously anticipated future. After determining which attributes  
18 matched and did not match their last recorded value, the V3 prototype consulted the  
19 V3 Target Table, which told it whether the browser was a new one or returning one.  
20       SUF ¶ 65. The V3 Target Table is in this way a “grading sheet” that instructed the  
21 system to assign a new ID or a previously stored one based on the number and kind  
22 of mismatches. This is a purely backward-looking analysis and cannot infringe.

23       The V3 prototype’s evaluation of any changes to data values necessarily was  
24 made only *after* the relevant changes occurred. SUF ¶ 75 (Ex. F, Traynor Rebuttal  
25 Report at ¶ 176). The V3 Prototype would identify the changes *after* they occurred  
26 and use the V3 target table to determine if they were of such a number and kind that  
27 the browser should be assigned a new or previously stored ID. As mSIGNIA’s  
28 counsel agreed in response to the Court’s question during the Claim Construction

1 hearing, the plain meaning of the “information regarding anticipated changes” term  
2 excludes solely evaluating changes after they occur, and therefore the V3 prototype  
3 cannot infringe.

4       *Second*, as the Court noted in its Claim Construction order, mSIGNIA  
5 distinguished from its claims prior art that “does not rely on information regarding  
6 anticipated (i.e., predicted, foreseen, expected) changes to a *specific data value*” and  
7 that instead “gives rules on what changes are *acceptable to the group as a whole*,  
8 but without actually anticipating any changes for any of the stored data values.”  
9 Dkt. 43 at 7 (emphases supplied). There is no dispute that the V3 prototype “does  
10 not rely on information regarding anticipated (i.e., predicted, foreseen, expected)  
11 changes to a *specific data value*,” as Dr. Goodrich admitted during his deposition.  
12 SUF ¶ 73 (Ex. E, Goodrich Dep., Tr. 227:10-17 (“Q. So I just want to break this  
13 answer down. So we agree that the target table does not show how a particular  
14 attribute -- I think what you called it is an individual value, how that's going to  
15 change; right? A. That's right. How particular values change to other values is not  
16 reflected in the target table.”); *id.* at 203:18-23 (“[J]ust to be clear, the target table  
17 does not show whether or not a certain attribute that was a 5 is going to change to a  
18 6, for example. It does not include that kind of information.”)). Instead, Dr.  
19 Goodrich’s opinion is that the V3 target table includes, at most, information as to  
20 what changes are *acceptable to a group of data values as a whole* and collectively.  
21 SUF ¶ 74 (*Id.* at 216:23-217:1 (“So the prediction isn't of individual values changing  
22 from, like, a 5 to a 6. It’s about how things happen in concert and in collections.”);  
23 *id.* at 214:6-11 (“As I’ve been explaining all along, the way the V3 algorithm works,  
24 it’s not on a value-by-value basis. It’s on this permutation basis. So the predictions  
25 are always about how changes to data attributes occur in concert, not individually.”);  
26 *id.* at 225:19-20 (“It's all about things in concert, not individually.”)). But  
27 information regarding changes that are acceptable to a group of data values as a  
28

1 whole is not within the scope of the plain and ordinary meaning of mSIGNIA's  
2 claims, as mSIGNIA itself has stated.

3 **B. The V3 Prototype Does Not Infringe Any Asserted Claim Because**  
4 **The Alleged Information Regarding Anticipated Changes Is Not**  
5 **“Stored for an Identity” Or “Associated with” Any Identity**

6 The V3 prototype does not infringe any Asserted Claim for the additional,  
7 independent reason that the V3 target table is not “stored for an identity” or  
8 “associated with” any identity. Nor could it be. The V3 target table is in no way  
9 associated with, linked to, or otherwise stored in connection with any particular  
10 identity. SUF ¶ 54. Rather, as mSIGNIA's expert has admitted, there was just one  
11 V3 target table in the system, regardless of how many identities there were:

12 Q. But there's not – so when V3 is running like when it was running  
13 in beta, it used one target table; right?

14 A. That's my understanding, yes.

15 Q. Okay. We would agree that there's one single target table that  
16 applies to all identities; right?

17 A. Yes. That's right.

18 Q. So there's no factual dispute to say whether a unique target table  
19 exists for each ID; right?

20 A. That sounds right. That sounds right, as I sit here today.

21 SUF ¶ 81. There is no dispute, as Dr. Goodrich testified, that the V3 target table  
22 applied just the same across all identities. Accordingly, it was not individualized for  
23 any particular user:

24 Q. There's one target table, and that target table is not individualized  
25 for any particular user; right?

26 A. That's right.

27 SUF ¶ 80. The V3 target table was in this way completely agnostic to the identity  
28 being evaluated, and it cannot be said to be “stored for” or “associated with” any  
identity.

In the V3 prototype, the only information stored “for an identity” or  
“associated with” any identity were the historical data values associated with a

1 particular InBrowserID. There was no information stored regarding whether, when,  
2 how, or why these attribute data values may change in the future. SUF ¶¶ 73-74  
3 (Ex. F, Traynor Rebuttal Report at ¶ 153).

4 Confirming that the plain and ordinary meaning of “stored for an identity”  
5 requires an association between an identity and the information regarding  
6 anticipated changes stored for it, named inventor Mr. George Tuvell testified that in  
7 the system he and his co-inventor invented, anticipated changes are *particular to* an  
8 individual user:

9 Q. And this is true of the system that you and Mr. Miller invented as  
10 well, right, that the anticipated changes are particular to an individual  
11 user, right?

12 [Attorney objection omitted]

13 THE WITNESS: Yes.”

14 SUF ¶ 4; *see also* SUF ¶¶ 5-6 (Ex. L, Tuvell Dep., Tr. at 77:17-78:6).

15 There is no genuine issue of material fact that the V3 prototype did not store  
16 the V3 target table in connection with any specific identity. Instead, mSIGNIA  
17 makes a legal argument that so long as the V3 target table is stored and used by the  
18 system in some matter, that is sufficient to meet the “stored for an identity”  
19 limitation. But mSIGNIA is incorrect because under the plain meaning of “stored  
20 *for an identity*,” merely “storing” the information in any manner is not sufficient to  
21 meet the claim language. Indeed, reading this limitation on a system that merely  
22 stores the alleged information in a general manner unrelated to any identity, as  
23 mSIGNIA attempts to do, would improperly ignore the “for an identity” limitation.  
24 *Zodiac Pool Care, Inc. v. Hoffinger Indus., Inc.*, 206 F.3d 1408, 1415 (Fed. Cir.  
25 2000) (“Absent any limitation of a patent claim, an accused device cannot be held to  
literally infringe the claim.”).

1           **C.     The V3 Prototype Does Not Infringe Any Asserted Claim Because**  
2           **It Does Not Include Functionality For “Recognizing That The**  
3           **Presentation Of Identity Information By The Computer Is**  
4           **Authentic” Or Is Not Authentic**

5           The V3 prototype does not infringe any Asserted Claim for the additional  
6           reason that it does not include functionality for “recognizing that the presentation of  
7           identity information by the computer is authentic, according to whether the  
8           computer has provided an allowable response to the challenge” as required by Claim  
9           1. Claim 25 has a materially equivalent limitation of “recognizing that the  
10          presentation of identity information by the first computer is authentic, according to  
11          whether the first computer has provided an allowable identity claim,” for which the  
12          argument herein applies equally.

13          The V3 prototype did not determine whether the presented identity  
14          information was authentic (*i.e.*, genuine) or not authentic, and it did not do so on the  
15          basis of whether the presented information was allowable or not. Rather, the V3  
16          prototype *always* assigned an identifier to the presented information – either a new  
17          ID (InBrowserID) or a previously stored one. SUF ¶ 77. This was true regardless  
18          of whether browser information presented to the V3 prototype was authentic or was  
19          not authentic. SUF ¶ 78. Accordingly, the V3 prototype did not “recogniz[e] that  
20          the presentation of identity information by the computer is authentic, according to  
21          whether the computer has provided an allowable response to the challenge.”

22          Further, there is no evidence of any of the three beta-testing customers using  
23          the V3 InBrowserID to authenticate any user. SUF ¶ 48 (Ex. E, Goodrich Dep. Tr.,  
24          184:12-18, 188:8-25). That is not surprising, given that during the beta-testing of  
25          the V3 prototype the V2 InBrowser commercial product (what customers actually  
26          used in connection with authenticating transactions) was running in parallel with the  
27          V3 prototype. SUF ¶ 43.

**D. mSIGNIA Has Failed To Show Infringement Under The Doctrine Of Equivalents And Any Indirect Infringement**

Although mSIGNIA alleges infringement under the doctrine of equivalents in its Complaint (Dkt. 1 ¶ 28) and its infringement contentions (Ex. B at 2), mSIGNIA's technical expert witness, Dr. Goodrich, does not offer any opinion of infringement under the doctrine of equivalents. SUF ¶ 15. InAuth's technical expert, Dr. Patrick Traynor, set forth in his Report and Declaration the reasons why the V3 prototype is substantially different from the Asserted Claims and does not infringe under the doctrine of equivalents. SUF ¶ 16. Dr. Traynor's opinions stand un rebutted. Summary judgment should be granted accordingly.

mSIGNIA did not allege indirect infringement in its Complaint (Dkt. 1 at ¶¶ 22-29) and Dr. Goodrich does not offer any opinion that the V3 prototype indirectly infringes any Asserted Claim. SUF ¶ 14. Dr. Traynor's opinions regarding lack of indirect infringement thus stand un rebutted. SUF ¶ 17. Summary judgment should be granted accordingly.

In view of mSIGNIA's failure to adduce any evidence to support a claim of infringement under the doctrine of equivalents or indirect infringement, InAuth respectfully requests that the Court grant summary judgment of no indirect infringement and no infringement under the doctrine of equivalents.

**V. CONCLUSION**

For all the foregoing reasons, InAuth respectfully requests that the Court grant its motion for summary judgment of non-infringement and enter judgment dismissing mSIGNIA's sole remaining infringement claim, with prejudice.

Should the Court grant its Motion, InAuth respectfully notes that it intends to move, pursuant to Local Rule 54-10 and 35 U.S.C. § 285, for an award of its reasonable attorney fees and costs in connection with mSIGNIA's conduct of this litigation – particularly its waiting to withdraw its infringement claims against InAuth's Commercial Products until the eve of infringement expert reports. InAuth

1 made available for inspection the source code for the InAuth Commercial Products  
2 and the V3 prototype on January 4, 2018. It is apparent from that source code that  
3 the Commercial Products (and the V3 prototype) do not store or use information  
4 regarding anticipated changes. At the latest, mSIGNIA should have withdrawn its  
5 infringement claims against the Commercial Products (and the V3 prototype) shortly  
6 after the Court issued its Claim Construction Order on June 6, 2018 (Dkt. 43),  
7 having had more than five months to inspect source code and understand that  
8 InAuth's products cannot infringe any Asserted Claim.

9  
10 DATED: November 12, 2018 Respectfully submitted,

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